



leave allowances were further reduced by one month's allotment of vacation (14.58 hours) and sick (8.75 hours) leave due to her having used more leave time than she had earned due to her leaves of absences without pay, thereby leaving her leave allowances overdrawn.

On appeal, the appellant argues that the proration of her leave time for August and September was unfair. Specifically, she argues that she should have been credited with at least one-half of her leave time allotment for August since she was on the payroll for 14 of the 23 work days in August. She also argues that she should be entitled to a full month's allotment of leave time for September since she was on the payroll through September 22. Moreover, the appellant asserts that the appointing authority has inexplicably reduced her leave time by an additional month's allotment for 2017.

### CONCLUSION

*N.J.A.C.* 4A:6-1.5 provides, in pertinent part, that:

- (a) Employees in State service are liable for vacation and sick leave days taken in excess of their entitlements.
- (b) An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.
  - 1) An employee shall reimburse the appointing authority for paid working days used in excess of his or her prorated and accumulated entitlements.
  - 2) An employee who returns to work from a leave of absence shall not be credited with paid vacation or sick leave until the amount of leave used in excess of the prorated entitlement has been reimbursed.

*N.J.A.C.* 4A:6-1.22(e) provides that while using donated leave time in State service, the leave recipient shall accrue sick leave and vacation leave and be entitled to retain such leave upon his or her return to work. Additionally, *N.J.A.C.* 4A:1-1.2(c) provides that the Civil Service Commission (Commission) may relax a rule for good

cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes.

In the instant matter, the appellant argues that it is unfair that she was not credited with one-half of one month's entitlement of leave time for August simply because she was not in pay status from the 9th through the 23rd day of the month, despite having returned on Monday, August 14. She also asserts that she should have received a full month's allotment for September since she was on the payroll until September 22, thereby missing the time-frame cited in the regulation by one day. Additionally, the appellant maintains that the appointing authority inexplicably reduced her leave time by an additional month's allotment for 2017.

In *In the Matter of Janet McSloy* (CSC, decided May 26, 2010), the Commission noted that *N.J.A.C. 4A:1-1.3* defined "days" as "calendar days unless otherwise specified." Therefore, the Commission found that the "9th" and "23rd" in the rule referred to actual dates of the month and not number of days worked and since McSloy was not in pay status from the 9th through the 23rd, a full month's leave allowance was properly deducted. The Commission also noted that even if the rule referred to the number of days worked, McSloy had only been in pay status for eight days during the month in question.

However, in the instant matter, the appellant was in pay status for 18 calendar days in August and 21 calendar days in September, which is more calendar days than the time period encompassed by the 9th through the 23rd days of the month. It seems patently unfair to penalize this employee by not providing her with any prorated leave time for August and September, despite working more days than are encompassed within the required dates, simply because the dates she worked were not within those required dates. Additionally, *N.J.A.C. 4A:6-1.5(b)* provides that an employee who works more than 23 days earns a full month's allotment of leave time. Under the particular circumstances presented, the Commission finds that good cause has been presented to relax the provisions of *N.J.A.C. 4A:6-1.5(b)* and credit the appellant with one-half month's allowance of sick and vacation leave time (or 4.38 hours of sick leave and 7.29 hours of vacation leave) for August 2017 and an additional one-half month's allowance of sick and vacation leave time (or 4.38 hours of sick leave and 7.29 hours of vacation leave) for September 2017.

The record in this matter also reveals that the appellant received donated leave during her second leave of absence. Specifically, the appellant used donated leave from Monday November 27 through Friday December 1; Monday December 11 through Wednesday December 20; and Tuesday December 26 through Friday January 12. Also, since the appellant was on the payroll the day before the two holidays in January 2018, she received holiday pay for January 11 and January 15, 2018. *N.J.A.C. 4A:6-1.22(e)* provides that while using donated leave time in State

service, the leave recipient shall accrue sick leave and vacation leave and be entitled to retain such leave upon his or her return to work. Therefore, the appellant was in pay status for 19 calendar days in December and 15 calendar days in September, which is more than and equal to, respectively, the number of calendar days encompassed by the 9th through the 23rd days of the month. Consequently, for the reasons noted above, the Commission finds that good cause has been presented to relax the provisions of *N.J.A.C.* 4A:6-1.5(b) and credit the appellant with one-half month's allowance of sick and vacation leave time (or 4.38 hours of sick leave and 7.29 hours of vacation leave) for December 2017 and an additional one-half month's allowance of sick and vacation leave time (or 4.38 hours of sick leave and 7.29 hours of vacation leave) for January 2018. Furthermore, with regard to the amount deducted due to the appellant's leave time being overdrawn, based on the foregoing, the amount of leave time the appellant utilized, prior to and between her leaves of absences should also be recalculated to determine whether she is still overdrawn.

One matter warrants additional comment, as the wording of *N.J.A.C.* 4A:6-1.5(b) may lead to illogical results, as evidenced by the instant matter, that section is under review by this agency for changes consistent with this and previous decisions.

### ORDER

Therefore, it is ordered that this appeal be granted.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 1ST DAY OF AUGUST, 2018



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